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10 Communities of Arizona and Michael A. Parham

11 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

12 In the Matter of:

Supreme Court No. R-16-0040

13 PETITION TO AMEND RULES 5(a),
14 5(b)(6), 5(b)(7) AND ADD RULES 13(h)
15 AND 20 OF THE RULES OF
PROCEDURE FOR EVICTION
ACTIONS

REQUEST TO STRIKE MARCH 21, 2017
"REPLY" OF ACAJ OR, IN THE
ALTERNATIVE, FOR LEAVE TO FILE
ADDITIONAL COMMENTS ON PROPOSED
RULE REVISIONS

16 Due process requires that the procedures by which laws are applied must be enforced
17 evenhandedly, so that individuals are not subjected to the arbitrary exercise of government
18 power.¹ These procedures apply to landlords as well as tenants. Due Process entitles a
19 party to notice and an opportunity to be heard at a meaningful time and in a meaningful
20 manner.²

21 Commenting Parties Manufactured Housing Communities of Arizona ("MHCA")
22 and Michael A. Parham (collectively, "Commenting Parties") hereby move to strike the
23 *second* Reply filed by the Arizona Commission for Access to Justice ("ACAJ") regarding
24 this Petition (the "Petition") as it appears to have been filed without Court approval.

25 Commenting Parties move in the alternative for leave to file additional comments to

26 ¹ See *Marchant v. Pennsylvania R. Co.*, 153 US 380, 386 (1894).

² See *Curtis v. Richardson*, 212 Ariz. 308, 312, 131 P.3d 480, 484 (App. 2006).

1 the Reply, as it made substantive changes to the proposed forms, for which no opportunity
2 for comments has been provided.

3
4 **I. FACTUAL BACKGROUND**

5 On July 6, 2016, the ACAJ filed Petition R-16-0040 proposing that this Court adopt
6 mandatory forms and pleadings in eviction actions. It provided a comment period through
7 September 23, 2016, and a Reply was to be filed on November 4, 2016.

8 On November 1, the ACAJ filed a Reply (“First Reply”) that not only addressed the
9 legal arguments in the filed Comments, but also made substantive changes to the forms
10 proposed. The undersigned immediately filed a request for leave to file additional
11 comments, as the “new forms” constituted a new petition by making substantive changes to
12 which no feedback had previously been given. Thereafter, this Court entered an order as
13 follows:

14
15 IT IS ORDERED that this matter be continued and that the
16 attached version of the proposed rules, which includes the
17 revisions made in Petitioner’s Reply, be reopened for comment,
with comments due February 17, 2017, in accordance with Rule
28(D), Rules of the Supreme Court of Arizona.

18 The Order did not contemplate or reference a proposed second Reply by the ACAJ,
19 and only permitted responses to the First Reply. Additional comments were submitted by
20 interested parties, including private attorneys who represent tenants, objecting to the
21 Petition. Commenting Parties have received no subsequent copies Court orders allowing
22 the ACAJ to file a second Reply.

23 On March 21, 2017, the ACAJ filed a second Reply (“Second Reply”) again making
24 substantive changes to the proposed forms. In the Second Reply, the ACAJ claims, “the
25 Commission requested and received a brief extension to March 22, 2017 to submit this
26 second reply.”

27 The Second Reply goes further than the contents of the last responses and attempts to
28 rebut comments made since the start of this process, in which Commenting Parties and

1 others challenged the constitutional and legal authority for the Judiciary to get into the
2 eviction forms business. In the Second Reply, the ACAJ argues that the courts do have
3 necessary authority. When the Second Reply was filed, however, a bill—HB2237—was
4 sitting on the Governor’s desk, which would specifically prohibit courts from adopting rules
5 that would *mandate* that landlords or their attorneys use particular notice or pleading forms
6 in eviction actions. The Governor signed the bill later that day.³ It will become effective
7 90 days after the legislature adjourns.⁴ Specifically, the bill adds the following language to
8 every set of landlord-tenant laws in Arizona, as well as to the forcible entry and detainer
9 statutes:
10

11 Notwithstanding any other law, an agency of this state and an
12 individual court may not adopt or enforce a rule or policy that
13 requires a mandatory or technical form for providing notice or
14 for pleadings in an action for forcible entry or forcible or special
15 detainer. The form of any notice or pleading that meets
16 statutory requirements for content and formatting of a notice or
17 pleading is sufficient to provide notice and to pursue an action
18 for forcible entry or forcible or special detainer.

19 Assuming the current legislative sessions ends by May 15, 2017 (which is standard),
20 this statute will be effective long before the date the undersigned believe the Court is
21 scheduled to act on the Petition.

22 **II. THE ACAJ’S COMMENTS SHOULD BE STRUCK.**

23 Despite searching, undersigned counsel have found no Order granting leave to
24 the ACAJ to file the Second Reply. Rather, the last Order, referenced above,
25 required all comments to be filed by February 17, 2017. As this was not done, the
26 Second Reply should be struck as untimely, and as for having no legal basis.

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³ See HB2237 at <https://apps.azleg.gov/BillStatus/BillOverview/68752>

⁴ See Article IV, part 1, § 1(3), Constitution of Arizona.

II. IN THE ALTERNATIVE, IF THE ACAJ'S COMMENTS ARE NOT STRUCK, ALL COMMENTING PARTIES—including THE UNDERSIGNED—SHOULD BE GIVEN LEAVE TO FILE ADDITIONAL COMMENTS ON THE LATEST PROPOSED RULE CHANGES.

The Second Reply includes new changes to the revised forms submitted with the ACAJ's first Reply on November 10, 2016. The March 21, 2017 forms now being championed by the ACAJ are once again new forms, on which no comments have been received. The Second Reply is, in essence, a new rule change proposal coupled with a response to the previously—and timely—filed comments. Yet, as before, this is not being treated as a new rule change proposal. If the ACAJ is successful, these newest versions of the proposed *mandatory* forms will make it through the process without any opportunity for public comment.

The latest ACAJ Reply is, in reality, a new proposal and should be treated as such under Supreme Court Rule 28. At the very least, additional time should be granted for all interested parties—including the undersigned Commenting Parties—to file comments on these new proposals.

III. CONCLUSION

The March 21, 2017 Second Reply should be struck as unauthorized and as having no legal basis.

Alternatively, since the Second Reply is really a proposal to adopt a new and different rule and forms, it should be re-opened for new comments strictly limited to those issues.

These Commenting Parties do not like repeatedly seeking extensions to research and prepare comments on these proposals and drag out the process. It is costing them time and money to in effect litigate with the ACAJ in this Forum. But the consequences of approval of new rules and eviction forms are expensive and profound to this industry and these Commenting Parties are merely trying to protect landlord interests in insisting that the rule

amendment process is properly observed and that they too receive due process in this matter.

DATED: March 27, 2017

WILLIAMS, ZINMAN & PARHAM P.C.

Electronically Signed

Michael A. Parham

By:

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*Attorneys for Commenting Parties Manufactured
Housing Communities of Arizona and Michael A.
Parham*

A copy of these comments has been e-mailed
this 27th day of March, 2017 to:

The Hon. Lawrence Winthrop
Commission on Access to Justice
spickard@courts.az.gov

/S/ *Michael A. Parham*